

**SAMPLE  
CONSTRUCTION SUBCONTRACT  
NO. TBD**



The Regents of the University of California  
Lawrence Berkeley National Laboratory  
One Cyclotron Road  
Berkeley, CA 94720

**SUBCONTRACTOR: TBD**

[Name]  
Attention: \_\_\_\_\_  
[Address]  
[City, State, Zip]  
Phone: \_\_\_\_\_ Fax: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**University Procurement Representative:**

Name: Sharon Ropes  
Title: Principal Subcontracts Administrator  
Phone: (510) 486-6932  
Fax: (510) 486-5115  
E-Mail: SARopes@lbl.gov

**Introduction**

This is a Fixed Price Construction Subcontract (hereinafter "Subcontract") for Old Town Phase I Deactivation and Demolition (D&D) Construction Services for the Lawrence Berkeley National Laboratory (hereinafter "LBNL"), as further described herein.

This Subcontract is between The Regents of the University of California, (hereinafter "University") and the party identified above as the "Subcontractor".

This Subcontract is issued under Prime Contract No. DE-AC02-05CH11231 between the University and the U.S. Department of Energy (hereinafter "DOE") for the management and operation of the LBNL and the performance of research and related work.

**Agreement**

The parties agree to perform their respective obligations in accordance with the terms, conditions, and provisions of the attached SCHEDULE OF ARTICLES and the documents referenced or incorporated therein, which together with this Signature Page shall collectively constitute the entire agreement and shall supersede all prior negotiations, representations, or agreements, whether verbal or written.

**[SUBCONTRACTOR'S NAME]**

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

## SCHEDULE OF ARTICLES

### **ARTICLE 1 – SCOPE OF WORK**

- A. Description. The Subcontractor shall perform all work for construction of Old Town Phase I Deactivation and Demolition (D&D) Construction Services, in accordance with this Subcontract. The worksite is located at One Cyclotron Road, Berkeley CA.

The work shall conform to applicable sections of the LBNL Facilities Division's *Construction Details and Design Guidelines*, available at: [http://fac.lbl.gov/Projects/CDDG\\_Home/](http://fac.lbl.gov/Projects/CDDG_Home/), as directed by the University Technical Representative.

The Subcontractor agrees to perform additional work arising from changes ordered by the University pursuant to the *Changes* clause of the General Provisions.

B. Required Documentation

1. The following documents shall be submitted to the University Procurement Representative no later than 10 days after the date of award of the Subcontract. Acceptable documents must be submitted and a Notice to Proceed must be issued before any work may commence at the worksite.
  - Site Specific Safety Plan, Injury and Illness Prevention Program (IIPP), and Job Hazards Analysis (JHA) Checklist (as required by the LBNL EH&S Construction Safety Group)
  - Statement and Acknowledgment Form (SF 1413)
  - Insurance Certificate and Endorsements
  - Performance Bond (per the *Performance Bond* clause of the General Provisions)
  - Payment Bond (per the *Payment Bond* clause of the General Provisions)
  - Workplace Substance Abuse Program Plan
  - Project Quality Assurance Plan
2. The Subcontractor shall complete and submit each of the following documents to the University as required by this Subcontract.
  - Application for Payment
  - Weekly Payroll Information
  - Assignment and Release
3. The Subcontractor shall submit other reports with respect to the Subcontractor's activities under this Subcontract, including reports on use of EPA-designated items and Government-owned property, as required by this Subcontract or as the University may require from time to time.

C. Davis-Bacon and Related Requirements

1. The construction work is subject to the Davis-Bacon Act and related labor standard clauses identified in the General Provisions (FAR Clauses 52.222-6 through 52.22-15). The Subcontractor shall pay its employees at least the minimum wages established by the General Wage Determination of the U.S. Department of Labor identified in this Subcontract and shall comply with all other related requirements. The Wage Determination and the Davis-Bacon Poster (WH-1321) shall be posted at all times by the Subcontractor and its subcontractors at the primary site of the work and the secondary site of the work, if any, in a prominent and accessible place where it can be easily seen by the workers. The Davis-Bacon Poster is available at: <http://www.dol.gov/whd/regs/compliance/posters/fedprojc.pdf>.
2. The Subcontractor shall submit a completed and signed *Statement and Acknowledgment* Form (SF 1413) for itself and each lower tier subcontractor providing construction labor under this Subcontract.
3. The Subcontractor shall also furnish weekly a payroll statement for all laborers and mechanics performing work at the worksite during the preceding week, accompanied by a signed "Statement of Compliance" indicating that the payrolls are correct and complete and that each laborer or mechanic has been paid not less than the proper Davis-Bacon prevailing wage rate for the work performed. The required weekly payroll information shall be submitted electronically utilizing LBNL's LCPtracker© System, which is available at <https://lcptracker.net/lcp/login.aspx>, unless otherwise authorized by the University Procurement Representative. Registration should be coordinated with the University Procurement Representative.

## **ARTICLE 2 – WORK SCHEDULE**

- A. Schedule. The Subcontractor shall fully complete the work within 15 months after acceptance. The University will issue the Notice to Proceed upon acceptance of the documents identified in Paragraph B of Article 1 - Scope of Work. Pending issuance of the Notice to Proceed, the Subcontractor shall perform other tasks not involving work at the worksite, as authorized or required by the Subcontract.

It is agreed that time is of the essence for this Subcontract and definite and certain lengths of time have been fixed for performance. Work shall be prosecuted regularly, diligently, and uninterruptedly at such rate of progress as will insure completion thereof within the time specified. The date of beginning, rate of progress, and time for completion are reasonable and essential conditions of this Subcontract. No act of forbearance by the University or extension by the University of the time for performance of this Subcontract shall in any way constitute or operate as a waiver of or excuse for any future default by the Subcontractor. No such action by the University shall constitute a waiver, release, or relinquishment of any of the rights or power herein conferred upon the University.

- B. Liquidated Damages. If the Subcontractor neglects, refuses or fails fully to complete the work within the time specified, whether or not the Subcontractor's right to proceed is terminated under the clause in the General Provisions entitled *Default (Fixed Price Construction)*, subject to extensions of time duly granted in the manner and for the causes specified in said clause, the Subcontractor and its sureties shall be liable to the University for liquidated and ascertained

damages for each calendar day that the work remains incomplete beyond the time herein fixed for the completion, in the amount of \$2,000.00 per calendar day.

It is hereby expressly and mutually agreed that it would be impracticable and extremely difficult to fix the actual damage which would or will be suffered in the event that the Subcontractor should fail to fully to complete the work within the time specified, and it is further agreed that said amount herein provided for said liquidated and ascertained damages is reasonable and proper. The amount so charged may be deducted by the University from any amounts which otherwise become payable to the Subcontractor.

C. Delays and Suspensions. The Subcontractor agrees to bear the risk of delays to completion of the work, and that it has entered into this Subcontract with full knowledge of this risk. Adjustments will be made to the work schedule for delays arising from unforeseeable causes beyond the control and without the fault or negligence of the Subcontractor, as described in the *Default* clause of the General Provisions (FAR 52.249-10), only under the following conditions:

1. The progress of the work is in accordance with the Subcontract work schedule at the commencement of the event giving rise to the delay.
2. The event causing the delay causes a delay in completing the work beyond the completion date established by the Notice to Proceed.

Any adjustment of the fixed price of this Subcontract as the result of a suspension of work for the University's convenience, pursuant to the *Suspension of Work* clause of the General Provisions (FAR 52.242-14), shall not exceed \$TBD per day for each day such compensation is payable.

### **ARTICLE 3 – PRICE AND PAYMENT PROVISIONS**

#### **A. Fixed Prices**

The University will pay the Subcontractor for the performance of this Subcontract a total fixed Subcontract price of \$TBD\_\_\_\_\_.

A Safety Allowance of \$30,000.00 is contemplated, and will be unilaterally added to the firm fixed price at the discretion of the University, which will be allocated, by mutual agreement of the University Technical Representative and the Subcontractor, to the workers as a direct incentive to safely perform the work.

This Subcontract price shall constitute full payment for the work, materials, services and other items required for performance of this Subcontract, and includes all applicable federal, state, and local taxes, duties and all of the Subcontractor's other obligations related to such work.

Any machinery or equipment purchased hereunder are for resale and are not subject to California sales tax, per the University's California State Resale Permit No. SR-CH 21-835970, with title thereto passing to the Government per the *Government Property* clause of the General Provisions prior to its use.

The University of California State Resale Permit No. SR-CH 21-835970 for LBNL is available at: <http://procurement.lbl.gov/supplier-forms/>.

B. Options

The University may exercise any or all of the following options within the life of this Subcontract. The prices include all costs associated with each option, such as labor, materials, equipment, support functions, management, fees, G&A, and profit.

C. Unit and Option Pricing

Options		
Unit Pricing		

D. Payments

1. Progress Payments

The University will make progress payments at the end of each calendar month or as soon thereafter as practicable, or at more frequent intervals, as determined by the University, based on estimates of the progress of the work performed by the Subcontractor and approved by the University.

The Subcontractor shall email a completed *Application for Payment* for the period directly to the LBNL Accounts Payable Office at [APInvoice@lbl.gov](mailto:APInvoice@lbl.gov), with copies to [SARopes@lbl.gov](mailto:SARopes@lbl.gov) and [RDCronin@lbl.gov](mailto:RDCronin@lbl.gov). The "subject" line of the email shall state the Subcontractor's name and the Subcontract number.

If unable to submit these documents by email, the Subcontractor may submit them by mail to the following address:

Lawrence Berkeley National Laboratory  
Accounts Payable Office  
Subcontract No. TBD  
One Cyclotron Road, M/S 971-AP  
Berkeley, CA 94720

With copies to:

Lawrence Berkeley National Laboratory  
Sharon Ropes, M/S 76-225  
and  
Robert Cronin, M/S 74-225  
One Cyclotron Road  
Berkeley, CA 94720

If requested, the Subcontractor shall also submit receipts or other vouchers showing its payments for material and labor to its subcontractors. The *Application for Payment* shall include all information required by the form. The Subcontractor's estimates must be reasonable and exclude all amounts for materials to which Subcontractor has not acquired title.

As part of a progress payment, the University may authorize payment for material delivered on the site and preparatory work done. Payment for material delivered to the Subcontractor at locations other than the site may also be allowed if:

- a. Material is delivered to a remote location which is specifically authorized by this Subcontract; and

- b. The Subcontractor furnishes satisfactory evidence that it has acquired title to such material and that the material will be used to perform this Subcontract.

## 2. Certification for Progress Payments

Along with each request for a progress payment the Subcontractor shall furnish the following certification, or payment will not be made:

"I hereby certify, to the best of my knowledge and belief, that:

The amounts requested are only for performance in accordance with the specifications, terms, and conditions of the Subcontract;

Payments to lower-tier subcontractors and suppliers have been made from previous payments received under the Subcontract, and timely payments will be made from the proceeds of the payment covered by this certification, in accordance with the lower-tier subcontracts; and

This request for progress payments does not include any amounts which will be withheld or retained from a lower-tier subcontractor or supplier in accordance with the terms and conditions of the lower-tier subcontract."

3. Progress Payment Terms. Payment terms for progress payments shall be Net 20 days, or 15 days if the Subcontractor is a small business. For inquiries about the status of a progress payment, call (510) 486-6954.

## 4. Retention

In making such progress payments, 10 percent thereof may be retained until final completion and acceptance of all work covered by the Subcontract. On completion and acceptance of any separate building, public work, or other division of the Subcontract on which the price is stated separately in the Subcontract, payment may be made in full, including retained percentages thereon, less authorized deductions.

## 5. Withholding of Payment

The University may withhold progress payment to the Subcontractor to the extent necessary to protect the University upon the occurrence of any one or more of the following events.

- a. Any failure of the Subcontractor to comply fully with any requirement of this Subcontract including, but not limited to, the following.
  - (1) Failure to adhere to, or recover to, the proposed construction schedule.
  - (2) Failure to make prompt payment to lower tier subcontractors for labor, materials, or services related to the work for which the Subcontractor has been paid by the University.
  - (3) Failure to rectify defective, omitted, non-conforming, or unauthorized work.
- b. The filing, delivery, or recording of any claim, lien, stop notice, or similar action against the University or the work.

- c. Any damage caused to a third party by the Subcontractor by reason of negligent acts of the Subcontractor where such acts are related to the work under this Subcontract.

The University reserves the right to determine the amount and degree of withholding, provided that the withholding shall not be unreasonable. The University will pay withheld amounts promptly upon removal of the grounds for such withholding.

When the work is substantially complete, the University may retain from previously withheld amounts or future payments an amount the University considers adequate for protection of the University until final payment is made under this Subcontract, and will release to the Subcontractor all the remaining withheld funds.

#### 6. Transfer of Title to the Government

All materials and work covered by progress payments shall thereupon become the property of the Government, but this provision shall not be construed as relieving the Subcontractor from the sole responsibility for all materials and work upon which payments have been made, or the restoration of payments for any lost, stolen, damaged or destroyed work, or work otherwise not accepted under this Subcontract, or as a waiver of the right of the University or the Government to require the fulfillment of all of the terms of the Subcontract. The Subcontractor shall take whatever action is necessary to protect and establish said Government title to all materials and work covered by progress payments made hereunder.

#### 7. Final Payment

Subject to the terms hereof, final payment shall be made 35 calendar days after the recording with the County of the Notice of Completion for the work under this Subcontract. For inquiries about the status of the final payment, call (510) 486-6954. The University will make the final payment under this Subcontract, including any retention or withhold, after:

- a. Final completion and acceptance of all work;
- b. The recording by the County of the Notice of Completion for the work;
- c. Presentation of a properly executed voucher; and
- d. Presentation of a completed Assignment and Release for the total fixed price of this Subcontract, signed by the Subcontractor and any assignees, using the form incorporated as a part of this Subcontract.

### **ARTICLE 4 – SUBCONTRACT ADMINISTRATION**

- A. University Procurement Representative. The designated University Procurement Representative for this Subcontract is the person authorized to make changes in the requirements of this Subcontract or make modifications to this Subcontract, including changes or modifications to the work. The Subcontractor shall submit all documents, notices, and requests for approval required by this Subcontract to the University Procurement Representative at the email address indicated on the signature page or at the following mail address:

Lawrence Berkeley National Laboratory  
One Cyclotron Road M/S 76-225  
Berkeley, CA 94720

Any notices and approvals required by this Subcontract from the University to the Subcontractor shall be issued by the Procurement Representative.

- B. University Technical Representative. TBD is the University Technical Representative for this Subcontract (also called Project Manager). The University Technical Representative is the person designated to monitor the Subcontract work and to interpret and clarify the technical requirements, but may not modify the terms of this Subcontract. The University Technical Representative may also authorize changes or additional work by means of a Field Order with a value of \$TBD\_\_\_\_\_ or less. If the cost will exceed this amount, changes or additional work can only be authorized by the University Procurement Representative by a Subcontract Modification.
- C. Closeout. The Subcontractor shall, as a condition of full payment, assist the University in accomplishing the administrative closeout of this Subcontract after the completion of performance, including, as necessary or required, the furnishing of documentation and reports, the disposition of property, the disclosure of any inventions, the execution of any required documents, the performance of any audits, and the settlement of any interim or disallowed costs.

## **ARTICLE 5 – SAFETY-RELATED REQUIREMENTS**

- A. Notice to Proceed. Work may not commence at the worksite until the Subcontractor submits an acceptable Site Specific Safety Plan, Injury and Illness Prevention Program (IIPP), or Job Hazards Analysis (JHA) Checklist, as required by the LBNL EH&S Construction Safety Group, and the University Procurement Representative issues a written Notice to Proceed. The Subcontractor may proceed with all other work authorized or required by the Subcontract in preparation for performance at the worksite.
- B. General. The Subcontractor shall comply with DOE Acquisition Regulation 970.5223-1, *Integration of Environment, Safety, and Health into Work Planning and Execution*, and all environment, health, and safety requirements, training, and associated safety documents referenced, attached, or incorporated to this Subcontract, including any incorporated safety related documents submitted by the Subcontractor and reviewed and accepted by the University. The Subcontractor shall also comply with, and assist the University and the DOE in complying with the environment, health, and safety requirements identified in, or applicable to, this Subcontract.
- C. Safety Standards and Testing; Electrical Device Certification Requirement. The materials, equipment, tools, and supplies furnished or used by the Subcontractor shall meet nationally recognized safety standards or have been tested and found safe for use by the University in a manner specified by the Subcontractor. All electrical equipment, components and conductors and other items of the type requiring testing by a Nationally Recognized Testing Laboratory (NRTL) recognized by the Occupational Safety and Health Administration (OSHA), shall be NRTL listed, labeled, or tested, in accordance with Title 29, Part 1910, *General Industry Standards*, of the Code of Federal Regulations (29 CFR 1910). The Subcontractor shall notify the University Procurement Representative and the University Technical Representative, in writing, of any materials, equipment, tools, or supplies to be furnished or used that do not meet these requirements. The University reserves the right to reject any such items. Information on required NRTL testing is available at <http://www.osha.gov/dts/otpca/nrtl/>.



- D. Worker Safety And Health Requirements. The Subcontractor and its lower-tier subcontractors performing work at an LBNL worksite are subject to the DOE *Worker Safety and Health Program* regulation of Title 10, Part 851 of the U.S. Code of Federal Regulations (10 CFR 851), and shall perform the work in compliance with the *LBNL Health and Safety Manual*, available at <http://www.lbl.gov/ehs/pub3000/>, which implements the requirements of 10 CFR 851, as well as their Cal/OSHA mandated Injury and Illness Prevention Plan (IIPP) or equivalent and all other LBNL safety procedures and policies communicated to the Subcontractor. The Subcontractor is responsible for ensuring that its lower tier subcontractors comply with these requirements. Violations of these requirements may subject the Subcontractor and its lower tier subcontractors to civil penalties.

As part of this requirement, the Subcontractor and its lower-tier subcontractors shall inform their workers of their rights and responsibilities by appropriate means, including posting the DOE-designated 10 CFR 851 "It's the Law" Worker Protection Poster at its LBNL workplace where it is accessible to all workers. The poster is available at:

<http://www.lbl.gov/ehs/wshp/assets/docs/851-poster.pdf>.

The Subcontractor shall ensure that workers requiring unescorted/unbadged access to an LBNL site complete the on-line *General Employee Radiation Training* (GERT), available at: <http://ehswprod.lbl.gov/EHSTraining/GERT/default.asp>. A GERT booklet is available at [http://www.lbl.gov/ehs/html/training\\_pdf/GERT\\_PDFONLY.pdf](http://www.lbl.gov/ehs/html/training_pdf/GERT_PDFONLY.pdf) and at the LBNL Site Access office in Building 65.

#### **ARTICLE 6 – NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY**

- A. The Subcontractor's attention is called to the *Equal Opportunity* and *Affirmative Action Compliance Requirements for Construction* clauses of the General Provisions.
- B. The goals for minority and female participation, expressed in percentage terms for the Subcontractor's aggregate work force in each trade on all construction work in the covered area, are as follows.

<b>Goal for Minority Participation for each trade</b>	<b>Goal for Female Participation for each trade</b>
25.6% Alameda County	6.9% Alameda County

These goals are applicable to the entire Subcontractor's construction work performed in the covered area. If the Subcontractor performs construction work in a geographical area located outside the covered area, the Subcontractor shall apply the goals established for the geographical area where the work is actually performed. Goals are published periodically in the Federal Register in notice form, and these notices may be obtained from any Office of Federal Contract Compliance Programs office.

- C. The Subcontractor's compliance with Executive Order 11246, as amended, and the regulations in 41 CFR Part 60-4 shall be based on (1) its implementation of the *Equal Opportunity* clause, (2)

specific affirmative action obligations required by the *Affirmative Action Compliance Requirements for Construction* clause, and (3) its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the Subcontract, and in each trade. The Subcontractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from contractor to contractor or from project to project for the sole purpose of meeting the Subcontractor's goals shall be a violation of this Subcontract, Executive Order 11246, as amended, and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- D. The Subcontractor shall provide written notification to the Deputy Assistant Secretary for Federal Contract Compliance, U.S. Department of Labor, within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under this Subcontract. The notification shall list the name, address, and telephone number of the subcontractor, employer's identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and completion dates of the subcontract, and the geographical area in which the subcontract will be performed.
- E. As used in this clause, the "covered area" is that county in which the work will be performed.

#### **ARTICLE 7 – CHANGES TO THE WORK**

- A. Pursuant to the *Changes* clause of the General Provisions, the University may direct changes to the work, including the performance of extra work within the general scope of this Subcontract. The University will direct changes through written change orders. Unless the change order expressly identifies the change as "extra work", the directed change shall be performed by the Subcontractor at no additional cost, subject to Subcontractor's right to request an equitable adjustment through a timely and properly submitted change order claim.
- B. Change order claims shall be submitted in writing to the University Procurement and Technical Representatives. Change order claims will be considered only if submitted within 30 days after the Subcontractor receives the written change order or notifies the University Procurement and Technical Representatives, in writing that it considers any direction, instruction, interpretation, determination, or other order by the University to be a change within the general scope of the Subcontract for which it is entitled to an equitable adjustment. The University Procurement Representative may grant an extension of this time period if the change involved a lower tier subcontractor and an extension is requested within the 30 day time period.
- C. See the *Change Order Adjustment* and *Change Order Claim Procedure* clauses of the General Provisions for allowable markups and related requirements. Change order claims requesting an adjustment to the Subcontract price shall include a complete cost proposal, or a partial cost proposal and a declaration of what required information is not then known to Subcontractor. If the Subcontractor submits a partial cost proposal with the Change Order Claim, the Subcontractor shall submit a complete cost proposal within the 30 day time period or extension thereof described in paragraph B, above.
- D. The direct costs for change order work shall consist of those for labor (including payroll taxes and fringe benefits), materials, supplies, sales taxes, applicable insurance, transportation of

materials, and any related bond costs incurred in the direct performance of the work. The direct costs shall not include any of the following: superintendents; assistant superintendents; project engineers; project managers; schedulers; estimators; drafting or detailing; small tools; office expenses including staff, materials and supplies; on-site or off-site trailer and storage rental and expenses; utilities; data processing personnel and equipment; Federal state or local business income and franchise taxes; overhead and profit, or any other costs and expenses.

- E. Change Orders will be converted into Subcontract Modifications, representing the complete and final resolution of all issues related to the Change Orders. The Subcontractor agrees to keep adequate documentation to permit the full and complete resolution of all change order issues.

## **ARTICLE 8 – COMPLETION OF CONSTRUCTION**

### **A. Substantial Completion**

1. Substantial completion means the stage in the progress of the construction work, as determined by the University Technical Representative, when the work is complete and in accordance with the terms of the Subcontract.
2. Upon notification by the Subcontractor that the construction work is substantially complete the University Technical Representative will inspect the work and provide the Subcontractor with a comprehensive list of items to be completed or corrected before establishing substantial completion. Subcontractor shall proceed promptly to complete and correct items on the list. The University Technical Representative will then re-inspect the work to determine whether all items have been completed and corrected. Failure to include any item on the list does not alter the Subcontractor's responsibility to complete all work in accordance with the Subcontract.
3. When the University Technical Representative determines that the work is substantially complete the Technical Representative will notify the Subcontractor in writing that the Construction Work is substantially complete. The notification will establish the date of substantial completion and the responsibilities of the University and the Subcontractor for security, maintenance, utilities, insurance and damage to the construction work.

### **B. Beneficial Use**

The University reserves the right to make use of any part of the work at any time prior to substantial completion or final completion, herein referred to as "Beneficial Use," upon 10 days written notice to the Subcontractor. Such beneficial use shall be at no additional costs to the University, except as provided in this Article, and shall be subject to the following conditions:

1. The University Technical Representative will inspect the portion of the work to be beneficially used and prepare a list of items to be completed or corrected prior to final completion. The Technical Representative will notify the Subcontractor in writing of the University's intent to beneficially use a portion of the Work.
2. Beneficial use shall not be construed by Subcontractor as an acceptance by the University of that portion of the construction work that is to be used, and shall not constitute a waiver of existing claims of either the University or the Subcontractor against each other.

3. The University will use its best efforts to prevent its beneficial use from interfering with the conduct of Subcontractor's remaining work.
4. The Warranty period, as described in the *Warranty of Construction* Clause (FAR 52.246-21) of the General Provisions will commence upon the first date of actual use of the portions of the construction work actually used.
5. The Subcontractor shall not be responsible for providing security in areas beneficially used or required to repair damage caused by the University in its beneficial use, but shall continue to maintain all insurance required by this Subcontract in full force and effect during the University's beneficial use.

#### C. Final Completion

1. Upon receipt of notice from Subcontractor that the construction work is ready for final inspection, the University Technical Representative will make such inspection. Final completion shall be when the University Technical Representative determines that the construction work is fully complete and in accordance with the Subcontract, including without limitation satisfaction of all "punch list" items.
2. Final completion is conditioned upon receipt of the following:
  - a. The final Application for Payment and all required submittals.
  - b. All guarantees and warranties procured by the Subcontractor from its subcontractors, all operating manuals for installed equipment, all as-built documents, and all other submittals required by this Subcontract.

### **ARTICLE 9 – INSURANCE**

- A. Insurance Requirements. The Subcontractor shall provide the following types and levels of Insurance coverage, which shall be maintained in full force and effect during performance of the work required by this Subcontract:

1.	<u>Commercial General Liability Insurance</u>	<u>Minimum Limit</u>
	• Per Occurrence	\$ 2,000,000
	• Products/Completed Operations Aggregate	\$ 4,000,000
	• Personal and Advertising Injury	\$ 2,000,000
	• General Aggregate	\$ 4,000,000
2.	<u>Business Automobile Liability Insurance</u>	<u>Minimum Limit</u>
	• Per Occurrence	\$ 1,000,000

The automobile liability insurance shall cover liability to third parties related to the Subcontractor's use of owned, scheduled, non-owned, or hired vehicles, including the Subcontractor's use of any University-furnished U.S. Government owned vehicles, and any resulting loss or destruction of, or damage to the University-furnished U.S. Government owned vehicles.

3. Workers' Compensation as required under California or other applicable State law, and Employer's Liability Insurance with a minimum limit of \$1,000,000 per accident and employee.
4. Builders All Risk Insurance: This insurance shall be provided as required by the General Provisions if the Subcontract value exceeds \$200,000, and shall be revised as necessary due to subsequent changes to the work in order to maintain the insurance for the full value of the work in progress and all materials and supplies.

The Subcontractor shall also provide such other insurance in such amounts which from time to time may reasonably be required by the University against other insurable hazards relating to the work to be done.

B. Coverage Requirements

The general liability insurance, by a valid certificate or endorsement, shall: (a) include a provision designating The Regents of the University of California and the U.S. Government as **additional insureds** with respect to performance of this Subcontract by the Subcontractor and its lower-tier subcontractors and consultants; and (b) include a **waiver of subrogation** in favor of the University and the U.S. Government.

The insurance coverage shall be primary and shall not participate with or be in excess over any other valid collectible insurance or program of self-insurance of the University or the U.S. Government.

The required insurance shall be obtained from insurance companies authorized to do business in California that have an A.M. Best rating of A: VII or better, or an equivalent Standard & Poor's rating of AA or better or Moody's rating of Aa or better; or that are acceptable to the University.

The insurance shall not be subject to a self-insurance retention (SIR) or deductible of \$100,000 or more without the written approval of the University Procurement Representative. If any of the insurance is written on a claims-made form, it shall continue for three years following completion or termination of this Subcontract and provide for a retroactive date of placement prior to or coinciding with the effective date of this Subcontract.

The Subcontractor or its insurers shall provide written notification to the University Procurement Representative at least 30 days in advance of any modification, change, or cancellation of any of the insurance coverage.

The stipulation of required coverage and limits of insurance shall not in any way limit the liability of the Subcontractor.

C. Proof of Insurance

Prior to commencing any Services at a location other than the Subcontractor's or lower-tier subcontractor's facilities, the Subcontractor shall provide certificate(s) of insurance and any necessary endorsements or other documentation confirming the required insurance coverage, including the "additional insured" and "waiver of subrogation" coverage, by submitting the certificate directly to the University Subcontract Administrator.

D. Lower-Tier Subcontractor Insurance

The Subcontractor shall require any lower-tier subcontractor who will perform work at the worksite to maintain general, automobile, and employer's liability insurance with a minimum per-occurrence or aggregate limit of \$1,000,000, as well as worker's compensation insurance, and confirm the required coverage before allowing the work at the worksite to commence.

**ARTICLE 10 - LBNL SITE ACCESS REQUIREMENTS**

- A. All Subcontractor and lower-tier subcontractor employees requiring access to LBNL DOE-affiliated sites are subject to DOE restrictions.
- B. The Subcontractor shall not assign foreign national employees to work at LBNL DOE-affiliated sites that were born in, are citizens of, are employed by, or represent a government, company, institution, or other organization based in a country on the Department of State's List of State Sponsors of Terrorism without prior written approval from DOE. Terrorist-sponsoring countries include Cuba, Iran, Sudan, and Syria. Requests for access must be submitted to LBNL at least 180 days in advance to allow time for approval from the DOE.
- C. LBNL is also required by DOE to document all foreign national employees who were born in, are citizens of, or are employed by a government, employer, institution or organization, of a sensitive country that require access to LBNL DOE-affiliated sites (assignees). Such employees must identify themselves upon entry to any LBNL site.

**ARTICLE 11 - MATERIAL SAFETY DATA SHEETS - HAZARDOUS MATERIALS**

Any hazardous materials, including any chemicals or chemical products, compounds or mixtures, furnished or used on-site under this Subcontract must be accompanied by the Material Safety Data Sheet (MSDS) required by the Federal Occupational Safety and Health Administration (OSHA) regulation 29 CFR 1910.1200(g). All of the MSDSs must reference the Subcontract number. Refer to FAR Clause 52.223-3, *Hazardous Material Identification and Material Safety Data*, of the General Provisions for additional requirements.

**ARTICLE 12 - WORKPLACE SUBSTANCE ABUSE PROGRAM PLAN**

The Subcontract requires the performance of hazardous activities that may involve a high risk of danger to life, public health and safety, transportation of hazardous materials, or the environment, and includes DEAR Clause 970.5223-4, *Workplace Substance Abuse Programs at DOE Sites*, which requires the Subcontractor to develop, implement, and maintain a workplace substance abuse program consistent with Part 707 of Title 10 of the Code of Federal Regulations (10 CFR 707).

Before the work can begin, the Subcontractor shall submit for approval a written Workplace Substance Abuse Program Plan (WSAPP) consistent with 10 CFR 707. Upon execution of the Subcontract and submittal and approval of the Subcontractor's WSAPP, LBNL will issue a written notice to proceed with the work. The Subcontractor is required to include DEAR Clause 970.5223-4 in any lower-tier subcontract with a value of \$25,000 that will involve the performance of any of the hazardous activities. Any lower tier subcontractor's WSAPP must be approved by the University before the lower tier subcontractor is allowed to perform work.

The program shall provide that any applicant for a testing designated position shall be drug tested before final selection for employment or assignment to such a position. Also, the program shall provide that any personnel utilized in a testing designated position shall be subject to random drug testing at a rate equal to at least 50 percent of the total number of personnel in testing designated positions for each 12 month period.

"Testing designated positions" are positions where the personnel's failure to adequately discharge his or her duties could cause significant harm to persons, property, the public health or safety, or the environment. Examples are: pilots, firefighters, and security personnel, public transportation vehicle operators, personnel directly engaged in production, use, storage, transportation, or disposal of hazardous materials, etc.

After the WSAPP is approved, its implementation will be subject to LBNL monitoring for compliance and effectiveness.

### **ARTICLE 13 – ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES**

A. General. In the performance of this Subcontract, the Subcontractor shall specify, furnish, and use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Subcontract requirements and the intended end use of the products or services. Information on environmentally preferable products and services is available at:  
<http://www.epa.gov/opptintr/epp/>.

B. Construction Requirements

In the construction of the building or work covered by this Subcontract, the Subcontractor shall specify furnish, and use: (1) products containing recovered materials that are EPA-designated items; (2) energy-consuming products that are energy efficient products; and (3) biobased products that are U.S. Department of Agriculture (USDA) designated items.

These requirements apply if the products can be acquired (1) competitively within a timeframe providing for compliance with the construction work schedule; (2) meeting construction performance requirements; or (3) at a reasonable price.

The energy-consuming product requirement applies to products listed on the following ENERGY STAR® Program or FEMP web sites, unless otherwise approved in writing by the University Procurement Representative:

ENERGY STAR®: <http://www.energystar.gov/products>

FEMP: [http://www1.eere.energy.gov/femp/technologies/procuring\\_eeproducts.html](http://www1.eere.energy.gov/femp/technologies/procuring_eeproducts.html)

The biobased product requirement applies to the extent not exempt under 7 CFR 2902.10, et seq.

C. Definitions

"Recovered material" means waste materials and by-products recovered or diverted from solid waste, excluding materials and by-products reused within an original manufacturing process.

"EPA-designated item" means a product that is or can be made with recovered material. The product categories include: building and construction, carpets, cleaning, electronics, fleets, food services, landscaping, meetings and conferences, office supplies, and paper. They are listed by the EPA in a comprehensive procurement guideline at 40 CFR Part 247 and <http://www.epa.gov/epawaste/consERVE/tools/cpg/products/index.htm>, and the EPA has provided purchasing recommendations in related Recovered Materials Advisory Notices (RMANs), available at <http://www.epa.gov/osw/consERVE/tools/cpg/backgrnd.htm>.

"Energy efficient product" means a product that (i) meets the criteria for use of the Energy Star trademark label, or (ii) is in the upper 25 percent of efficiency for all similar products as designated by the DOE Federal Energy Management Program (FEMP).

"Biobased product" means a product determined by the USDA to be a commercial or industrial product (other than food or feed) composed, in whole or in significant part, of biological products, including renewable domestic agricultural materials (including plant, animal, and marine materials) or forestry materials. Biobased products include building materials, construction and road maintenance materials, furniture and furnishings, houseware and cleaning supplies, industrial supplies, landscaping and agriculture materials, office supplies, personal care items, and outdoor gear. A catalog of USDA-designated biobased products is available at: <http://www.biopreferred.gov/bioPreferredCatalog/faces/jsp/catalogLanding.jsp>.

#### D. Reporting on EPA-Designated Items

If this Subcontract exceeds \$150,000, the Subcontractor shall, within 30 days of completion of the Subcontract, submit a report to the University Procurement Representative and Technical Representative on any EPA-designated item(s) delivered or furnished and used in performance of the Subcontract, consisting of the following:

1. The total dollars spent for EPA-designated items, and
2. An estimated percentage of the total recovered material in EPA-designated items, including, if available, the percentage of post-consumer material content (i.e., material used as a consumer item and discarded for disposal or recovery).

If EPA-designated items were available but not delivered or furnished and used, the Subcontractor shall provide a written explanation, based on the reasons listed above.

### **ARTICLE 14 – ASSIGNMENT OF KEY PERSONNEL**

The personnel specified below are considered to be essential to the work being performed under this Subcontract. The Subcontractor shall not reassign or divert such personnel to other projects without the written consent of the University Procurement Representative. Prior to reassigning or diverting any of the specified individuals to other projects, the Subcontractor shall notify the University Procurement Representative reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the performance of this Subcontract.

Name	Title	Percentage of Time Dedicated to the Project
	<b>Project Representatives</b>	
	Project Executive	15%



	Project Manager	50%
	Project Controls	50%
	<b>Field Representatives</b>	
	Health and Safety Representative	100%
	Radiation Protection Manager	100%
	Superintendent	100%

#### **ARTICLE 15 - E-VERIFY PROGRAM ENROLLMENT**

Pursuant to the *Employment Eligibility Verification* clause of the General Provisions (FAR 52.222-54), the Subcontractor shall:

1. Enroll as a Federal contractor in the online E-Verify System at: <https://e-verify.uscis.gov/enroll>, and within 10 days of award of this Subcontract provide the University Procurement Representative with written verification of the enrollment, such as a copy of the Subcontractor's "Company Information" page from the E-Verify System.
2. Include the clause in each lower-tier subcontract for construction or services exceeding \$3,000, as required by the clause (excluding those with self-employed individuals), and within 10 days of award thereof provide the University Procurement Representative with written verification of the subcontractor's enrollment in the E-Verify System.

#### **ARTICLE 16 – INCORPORATED DOCUMENTS**

The following documents are hereby incorporated as a part of this Subcontract. The documents marked with an asterisk are available at: <http://procurement.lbl.gov/welcome-to-procurement-property/become-a-supplier/general-provisions/>, and <http://procurement.lbl.gov/supplier-forms/>.

- General Provisions for Fixed Price Construction Subcontracts, dated 7/5/13 \*
- Old Town Phase I Deactivation and Demolition (D&D) Construction Services Statement of Work, dated 6/18/14
- General Wage Decision No. CA140029, Modification 12, dated 6/13/14
- Small Business Subcontracting Plan, dated \_\_\_\_ (Required for award to Large Business)
- Assignment and Release Form, dated 4/26/13 \*

(END OF SCHEDULE OF ARTICLES)